IN THE HIGH COURT OF JUDICAUTRE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2305 OF 1998

Smt. Anita Deoraj Naidu ... Petitioner

Vs.

The State of Mahatrashtra and
Ors. ... Respondents

Mr. A.A. Pol for Petitioner.

Mr. R.M. Patne, A.G.P. for Respondent Nos. 1 to 4.

Mr. M.V. Aiya for Respondent No. 5.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 18, 2005

P.C.

. The Petitioner along with Respondent No. 5 was the applicant for fair price shop to be allotted by Respondent No. 1. On consideration of the material produced, Respondent No. 4 by an order of 23.4.1997 made allotment in favour of Respondent No. 5. The Petitioner aggrieved by the order, preferred revision application before Respondent No. 3. Respondent No. 3 by order dated 8.7.1997 allowed the revision preferred by the petitioner herein and remanded the matter back to Respondent No.4. Respondent No. 5 aggrieved preferred second revision application before Respondent NO. 2. Respondent No. 2 allowed the revision application preferred by the Respondent No.5 and set aside the order of Respondent No. 3 and restored order of

Respondent No. 4. It is this order which is the subject matter of the present petition.

. On behalf of the Petitioner, their learned counsel has firstly contended that the second revision was not maintainable considering Rule 24 of the Maharashtra Schedule Commodities (Regulation of Distribution) Order 1975 made in exercise of the Orders under Essential Commodities Act, 1955. It is then set out that Respondent No.5 on the date of grant of order namely 23.4.1997, did not have any premises. Respondent No. 5 made available new premises some time on 30.9.1997. This was new material which could have not been considered by Respondent No. 4 and on this count also the impugned order is liable to be set aside. For the aforesaid reasons, it is submitted that this court in the exercise of extra ordinary jurisdiction should interfere.

. On the other hand on behalf of the Respondent No. 5 their learned counsel points out that Respondent No. 5 satisfied all the criteria and performed better than the Petitioner and in these circumstances, shop has been allotted to her. This court in exercise of its extra ordinary jurisdiction ought not to interfere with the impugned order.

. We have heard the learned counsel. We may gainfully reproduce Rule 24 of the order which reads as under :

"Power to call for and examine records of proceedings and revise orders ; If any person is aggrieved by an order passed by the Collector, the Commissioner, and if any person is aggrieved by an order passed by the Commissioner, the State Government, may; , on an application made to him or it by the aggrieved person, within thirty days from the date of receipt of such order, stay the enforcement of such order. The Commissioner or the State Government, as the case may be, may also call for and examine the record of any enquiry or proceedings of the concerned Officer exercising or failing to exercise the powers under this Order to add, to amend, vary, suspend or cancel any authorisation issued or deemed to be issued under clause 3 or any supply card issued or deemed to be issued under clause 6 of to forfeit the deposit for any part deemed thereof paid or deemed to be paid by a

fair price shop or authorised agent as security or to take any other action under the provisions prescribed by or under this Order, for the purpose of satisfying himself or itself as to the legality or propriety of the order passed by such officer, and as to the regularity of the proceedings of such officer and may pass such order thereon as he or it, as the case may be, thinks fit.

Provided that State Governments may at any time, during the pendency of any enquiry or proceedings or within one year from the date of any order passed by any officer under the provisions prescribed by or under this Order, suo motu stay any pending enquiry or proceedings or the enforcement of such order if considered, necessary and may call for and examine the record of any such enquiry or proceedings and pass such order thereon as it thinks fit.

Provided further that, the Commissioner, or the State Government, as the case may be, shall not pass any order under this clause which adversely affects any person

unless such person has been given a reasonable opportunity of being heard."

. On a reading of Rule 24 of the said order, it becomes clear that the Revisional power can be exercised by preferring revision before the Commissioner if the order be of the Collector and if the order be of Commissioner to the State Government. In other words, the revisional forum is available either before the Commissioner or State Government depending upon, whose order is being challenged. The first proviso as set out earlier, however would show that apart from exercise of power of revision in the first part, proviso further provides for exercise of revisional power by the State Government any time during the pendency of the enquiry or proceedings or within one year of any order passed by the Officer under the provision prescribed by or under this order. Normally proviso has to be read as an exception to the rule. In the instant case, looking at the proviso itself it is clear that in a case where Commissioner exercises revisional power, it is open to the State Government to further exercise revisional power. The learned counsel for the Petitioner had sought to rely on the judgement in Writ Petition No. 1485 of 2002 decided on 19.3.2002. We have found that the issue was not

concluded and as set out therein, was only on a prima facie consideration. Considering that it was open to Respondent No. 2 in a case where revisional powers were exercised by Respondent No. 3 to exercise revisional powers pursuant to proviso to Rule 24 of the Order. The first contention must therefore, be rejected.

. We may now come the second contention. It appears from the record that on the date when the order was granted by Respondent No. 4 in favour of Respondent No. 5, the premises shown by Respondent No. 5 had been burnt down and were not available. It is only subsequently on 30.9.1997 that the new premises became available. Considering this aspect and what has been argued at the bar on behalf of the Petitioner, that the new material could not have been considered, we feel it appropriate that the matter be remanded back to Respondent No. 4 in terms of the order of Respondent No. 3 by issuing following directions :

(1) The impugned order of Respondent No. 2 is set aside. The order of Respondent No. 3 is restored.

(2) It will be open to the Petitioner to canvas all contentions as urged by him before this court or any other contention which would be available

except to the extent decided by this court. It will be open to Respondent No. 5 to point out to the Respondent No. 4 that the premises which were available were destroyed by an act which was not on account of the fault of Respondent No. 5 and that there are now premises available. Respondent No. 4 to consider the same independently on the facts and circumstances of the case.

(3) Considering Respondent No. 5 is running fair price shop, till such time Respondent No. 4 takes decision and for the period of one month thereafter, Respondent No. 5 to continue to run the fair price shop.

(4) Respondent No. 4 to decide the matter at any rate within the period of four months from today.

(5) With the above observations, rule made absolute to that extent and order dated 17.3.1998 passed by Respondent No. 2 is set aside. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)